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ECF FILED ON 10/21/09

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

| | | |
|--------------------------|---|-------------------|
| In Re: |) | BK-S-09-10664-LBR |
| |) | Chapter 13 |
| ERIC SWOGGER, and |) | |
| ANITA C. SWOGGER, |) | |
| |) | |
| Debtor in Possession, |) | DATE: 11-04-09 |
| |) | TIME: 10:30 A.M. |

OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW, the Debtors, ERIC and ANITA SWOGGER, (hereinafter "Debtors"), by and through their attorney, CHRISTOPHER P. BURKE, ESQ., and respectfully requests this Court to deny the Motion For Relief From The Automatic Stay, filed by Creditor, WELLS FARGO BANK, N.A., (hereinafter "Wells Fargo") by and through their attorneys, GREGORY L. WILDE, ESQ. of WILDE & ASSOCIATES and MARK S. BOSCO, ESQ. of TIFFANY & BOSCO, P.A.. This Opposition is based upon the pleading and papers on file herein and the Memorandum of Points and Authorities, attached hereto and incorporated herein.

FACTS

On January 19, 2009, a Chapter 11 bankruptcy was filed on behalf of Debtors. Listed as a secured creditor is Wells Fargo, the lien holder on the property located at 11876 Principle Ct., Las Vegas, Nevada 89123.

POINTS AND AUTHORITIES

11 USC Section 362 (d) (1) states that the Court may terminate, modify or condition stay for cause, including the lack of adequate protection of an interest in property of such party in interest;---

11 USC Section 362 (d) (2) the Court may terminate, modify or condition a stay with respect to a stay of an act against property under subsection (a) of this section, if-

- (A) the debtor does not have an equity in such property AND
- (B) such property is not necessary to an effective reorganization

Creditor is seeking relief from stay because of Debtors lack of post petition payments on their mortgage. At this time, Debtor owed approximately \$258,500.00 on her first mortgage to Wells Fargo Bank, N.A. Creditor estimate the property has a value of \$320,000.00.

First, Debtor argues Wells Fargo does not have standing to bring this motion as they are not a real party in interest. F.R.B.P. 7019. Second, Debtors argue there is 30% equity in the property. As such this 'equity cushion' is enough to deny the lifting of the stay. Third, even if there is no equity in the property, the property must also not be necessary for a reorganization for the stay to lift. 11 U.S.C. § 362(d)(2).

Fourth, Debtor requests six (6) months to get current. Once, current, the Debtor will then maintain their regular monthly mortgage payments to Wells Fargo.

1 THEREFORE, Debtors requests that, the Motion for Relief from
2 Automatic Stay, be denied, or in the alternative stayed for a
3 period of time to allow Debtor to become current with their
4 payments.

5 DATED, this 21st day of October, 2009.

6
7 RESPECTFULLY SUBMITTED:

8
9 /S/CHRISTOPHER P. BURKE, ESQ.
10 CHRISTOPHER P. BURKE, ESQ.
11 Attorney for Debtor
12 218 S. Maryland Pkwy.
13 Las Vegas, NV 89101
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**CERTIFICATE OF MAILING OF OPPOSITION TO
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

The undersigned hereby certifies that on October 21, 2009, a true and correct copy of the OPPOSITION TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY; was mailed by depositing a copy of the same in a sealed envelope, postage prepaid, in the United States Mail to the names and addresses listed below:

Gregory L. Wilde, Esq.
WILDE & ASSOCIATES
208 S. Jones Blvd.
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U.S. Trustee
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Las Vegas, NV 89101

Eric & Anita Swogger
11876 Principle Ct.
Las Vegas, NV 89123

/S/KARYN HOLLINGSWORTH
Employee of
Christopher P. Burke, Esq.